MONTANA LEGISLATIVE HISTORY

Chapter 340 1977

Bill H _____ S 385 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on _____	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
_____	___C	_____	___C
3/22	✓C	3/7-8	✓C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 385

INTRODUCED BY Thomas Mahan, Healy Lee Rotman, Aber McCallum

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section that reads as follows:

Judicial designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under 95-3214 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

Section 2. Section 95-2213, R.C.M. 1947, is amended to read as follows:

"95-2213. Merger of sentences. (a) Unless the judge otherwise orders, (1) when a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term, and (2) when a person under suspended sentence or on probation ~~or parole~~ for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence~~,~~ or probation~~, or parole~~ shall be merged in any new sentence of commitment or probation.

(b) The court merging the sentences shall forthwith furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the

sentences being merged.

(c) If an unexpired sentence is merged pursuant to subdivision (a), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(d) Separate sentences of two (2) or more crimes shall run concurrently unless the court otherwise orders.

(e) Except as provided in this subsection, when a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under 95-3214 in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Section 3. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"95-3214. Parole authority and procedure. (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he has served at least ~~one-quarter (1/4)~~ one-half of his full term, less the good time ~~allowances off, as~~ allowance provided for in ~~section~~ 80-1905; except that ~~no convict designated a persistent felony offender under section 95-2206.5 may be paroled until he has served at least one-third (1/3) of his full term, less good time allowances off, as provided in section 80-1905~~ a convict designated as a nondangerous offender under [section 1] may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 80-1905. ~~A first offender serving a time sentence may be paroled after he has served, upon his term of sentence, twelve and one-half (12 1/2) years. A persistent felony~~ Any offender ~~as defined in section 95-2206.5~~ serving a time sentence may be paroled after he has served, upon his term of sentence, seventeen and one-half (17 1/2) years.

(b) No convict serving a life sentence shall be paroled until he has served thirty (30) years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment,

and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary, with respect to the eligibility of prisoners for parole, and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued it shall recite the conditions thereof."

Section 4. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"95-3215. Conditional release. A prisoner on parole who has served ~~one-fourth (1/4)~~ one-half of his term or terms, less good time allowances, or a ~~persistent felony offender who has served one-third (1/3) of his term or terms, less good time allowances~~ nondangerous offender on parole who has served one-quarter of his term or terms, less

good time allowances, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905."

Section 5. Repealer. Section 95-2206.5, R.C.M. 1947, is repealed.

-End-

STATE OF MONTANA

REQUEST NO. 594-77

FISCAL NOTE

(Revised)

Form BD-15

In compliance with a written request received February 22, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 385 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Prog am Planning, to members of the Legislature upon request.

THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON SENATE BILL 385.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to revise the law regarding eligibility for parole and the merger of sentences when a second crime is committed while in prison or on parole or furlough.

FISCAL IMPACT:

Within the time limit given, there cannot be accurate data compiled. Time would be needed to assess the number of people who committed crimes while in prison or on parole and calculate the length of the original sentence, plus the additional sentence for the new crime.

41% of the current population (207 people) are in the prison as the result of committing a violent crime. If they were not eligible for parole until serving one-half of their sentence, then the prison population would increase due to the length of stay for these 41% being increased. The per diem cost at the prison is currently $26.87 per day. Also, additional rehabilitation programs on work programs would have to be implemented at the prison to serve this increase in population.

NOTE:

The fixed cost of operating the prison is the major portion of the total per diem cost. Small variations in the population could be absorbed without increases in facilities or personnel.

Richard L. Irving for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-24-77

45th LEGISLATIVE SESSION

COMMITTEE ON FINANCE AND CLAIMS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE	Without Recommend
50	1/27/77	2/5	2/5/77		2/5/77					
71	1/28/77	2/19,3/5-7	3/7/77			3/7/77				
72	1/25/77	2/19,3/4	3/4/77			3/4/77				
93	1/13/77	2/5	2/5/77	2/5/77						
142	2/15/77	2/21,3/4	3/4/77							3/4
154	2/5/77	2/19,3/4	3/4/77		3/4/77					
166	1/28/77	2/21,3/7-8-								
188	2/14/77	2/21,3/4	3/4/77			3/4/77				
217	2/8/77	2/21,3/7-8-				HOLD				
236	1/24/77	2/19,3/7-8 3/9-								
239	2/3/77	2/7,3/7-9	3/9/77			3/9/77				
247	2/24/77	3/7-8	3/8/77			3/8/77				
324	2/21/77	3/7-8	3/8/77			3/8/77				
340	1/29/77	2/19,3/7-8								
354	2/17/77	2/21,3/8	3/8/77							3/8/77
385	2/21/77	3/7	3/7/77			3/7/77				
SR 2	1/12/77	transferred	1/17/77							

MONTANA LEGISLATIVE COUNCIL LIBRARY

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

March 7, 1977

The ninth meeting of the Senate Finance and Claims Committee met on the above date in room 331 of the State Capitol. The roll call was taken and the meeting was called to order by Senator Thiessen, Chairman at 3:35 P.M.

Senator Boylan explained he had sponsored Senate Bill 239 at the request of the Department of Agriculture.

Mr. Gary Gingery, Department of Agriculture said this was a bill to try to get a long range perspective plan on the forest service, fish and game, railroads, etc. so that a coordinated and continuing program to eliminate noxious weeds could be carried out. He said Carlson Foley funds. Statement attached.

Question by Senator Etchart as to whether these funds were ongoing funds or would we have you back about every 2 years for more funding? Ans. They would have to go back about every 2 years to Congress to ask for a re-appropriation.

Question: How many employees in the State Dept. of Agriculture. The answer was about 53, and they would need another full time FTE to carry out the program. When asked to rate this program on a priority list, he felt this would be high, that they might be able to fund up to 30% of it with the present staff but the other 70% would have to go without it, they needed someone to coordinate with the Federal Program. Some members questioned this since they had a federal coordinator in Mansfield's office and also Keith Kelly in the Governor's office.

A question was asked about the biological wheat control program and whether this was the same thing. The answer was no.

Senate Bill 247 was explained by Senator Dover. He said there was something that should be in it and was not. When they revised the bill the fee would go through the complete time of the hearing. He did not feel the fiscal note could possibly be right.

Mr. Gene Phillips, Pacific Power and Light Company said he would support it and would like to know when it would be possible to get their money back.

Tom Winsor, representing the Chamber of Commerce, said they supported Senate Bill 247 as amended. He said they firmly believe there should be a stopping point and it should be as soon as possible.

Mr. Ted Doney, Chief Legal Council for the Department of Natural Resources said the bill was better with the amendments but they were still concerned. The cost of mandating many decisions and the cost of many law suits was of concern to them. He said if the fee is going to pay for the hearings that is his main concern. Senator Thiessen read a statement from the fiscal analyst on the bill.

Senate Bill 385 was explained by Senator Thomas. He said there was a new fiscal note on this bill and handed it out. He said there are around 500 in the prison. He said he did not think there would be a great deal of cost in this bill since there was a provision in it on dangerous offenders, and this would determine the review procedure. He said he would recommend that the amendment be put back in if the committee decided to pass the bill.

Senator Dunkle explained Senate Bill 324. He said it was brought into this committee to consider the fiscal note. He said he felt it could also be arranged with Senate bill 247 by Dover, and House Bill 661, as well as some points some of them were interested in. He recommended amending page 7 to be identical with House Bill 661, and read the proposed amendments, attached, as well as the others he proposed, and would like fertilizer plants exempt.

Ted Doney said he would support the amendments as proposed. He said he felt the fertilizer plants should be included since though they weren't under the same utility price controls that are on the other things.

Senator Himsl said he felt there was a contradiction in the two bills. One put a time on fees, the other opened it up. Mr. Shannahan agreed that this was a concession. Other questions were asked such as why did they maintain that the fertilizer plant should come under the utility siting act, and Ted answered that the basic reason is that the act covers things no other act does, questions around polution of air, water, water withdrawls, etc. and the poeple should have some say that the over all impact of the over all operations of the act. Q. what about the impact in regard to schools, would it take it out so there was no need for a study, and they answered, no.

Senator Fasbender gave a report on Senate Bill 71 which had been in sub-committee, as follows:

Governor	changed to	41,000
Leuitenant Gov	be left at	30,000
Chief Justice	lowered to	39,500
Associate Justice		38,500
Attorney General		39,500
State Auditor		25,000
OSPI		30,000
PSC		25,000
Secretary of State		25,000
Clerk of Court		20,000
District Court Judges		35,000

He said he would like to have the Elected Officials Sub-committee take an estimate to determine what the cost of the groceries for the immediate family of the Governor is and have that amount deducted from the budget. He felt they should also take a close look at the duties previously assumed by the former Leuitenant Governor and possible put back under the Leuitenant Governor rather than to create another department.

Senator Fasbender moved acceptance of the sub-committee report, second by Senator Regan. Discussion was held about the people working under the elected officials and receiving more salary than the elected officials.

A motion was made, seconded and passed to change the Attorney General's salary to 37,500, accepted by the sub-committee.

Motion by Senator Fasbender that Senate Bill 71 do pass as amended. Voted and passed.

Senate Bill 239 was discussed. Senator Smith said he felt it was time we got a handle on this and were able to get some positive action toward weed control. Senator Boylan said in the Agriculture Committee the members all agreed that this was a real problem. Senator Regan said she thought they would not need the extra FTE, and would like to amend the bill to say the federal funds should be used to administer as well as to monitor and audit, and to state all costs should be born by these funds. Senator Stephens moved SB 239 do pass, second by Senator Smith, withdrawn for an amendment, by Senator Regan, with a motion to amend the amendment by removing the last part that all costs should be born by these funds since it might include services already being handled, and therefore actually cut services to the poeple. Discussion was held on having the fiscal analyst prepare an amendment and a letter of legislative intent and to have them ready for the next meeting.

Senator Fasbender moved to pass consideration until they could get a lawyer to look into it from the Legislative Council.

Senate Bill 385 . Motion by Senator Roberts to place the amendments back in the bill, second by Senator Boylan;

Motion by Senator Roberts, second by Senator Boylan that Senate Bill 385 do pass as amended. Voted and passed, Senator Regan obstained.

The meeting adjourned.

E Thiessen

SENATOR THIESSEN, Chairman

3.30 PM

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 3/7/77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	✓		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM	✓		
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	✓		
BOYLAN	✓		
FLYNN		Absent	
MEHRENS	✓		
REGAN	✓		
ROBERTS	✓		
THOMAS	✓		

STANDING COMMITTEE REPORT

March 7 19 77

MR. PRESIDENT

We, your committee on FINANCE AND CLAIMS

having had under consideration SENATE Bill No. 385

Respectfully report as follows: That SENATE Bill No. 335,

second reading, be amended as follows:

1. Amend page 1, section 1, line 23.
Following: "imposed;"
Strike: "and"
Insert: "or"

2. Amend page 6, section 4, line 4.
Following: line 4
Insert: "Section 5. Application of act. This act applies to any offender sentenced after July 1, 1977. (Section 2 of this act) applies to any prisoner who, after July 1, 1977, commits an offense while he is imprisoned in the state prison or while he is released on parole or under the prisoner furlough program."
Renumber: subsequent section

~~DO PASS~~

AND AS SO AMENDED, DO PASS

SENATOR THIESSEN Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill [illegible]
Feb. 17, 1977

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill 385, ~~introduced~~ copy, as follows:

1. Amend page 1, section 1, line 23.
Following: "imposed;"
Strike: "and"
Insert: "or"

Bill Thomas, Senator

STATE PUB. CO.

COMMITTEE OF THE WHOLE AMENDMENT

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL NO. 385, introduced bill, as follows:

1. Amend page 6, section 4, line 4.
Following: line 4
Insert: "Section 5. Application of act. This act applies to any offender sentenced after July 1, 1977. [Section 2 of this act] applies to any prisoner who, after July 1, 1977, commits an offense while he is imprisoned in the state prison or while he is released on parole or under the prisoner furlough program."
Renumber: subsequent section

COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 3
Feb. 17, 1977

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill 385, ~~introduced copy~~, as follows:

1. Amend page 1, section 1, line 23.
Following: "imposed;"
Strike: "and"
Insert: "or"

COMMITTEE OF THE WHOLE AMENDMENT

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL NO. 385, ~~introduced bill~~, as follows:

1. Amend page 6, section 4, line 4.
Following: line 4
Insert: "Section 5. Application of act. This act applies to any offender sentenced after July 1, 1977. [Section 2 of this act] applies to any prisoner who, after July 1, 1977, commits an offense while he is imprisoned in the state prison or while he is released on parole or under the prisoner furlough program."
Renumber: subsequent section

SENATE COMMITTEE FINANCE AND CLAIMS

Date 3-7 Bill No. 385 Time

NAME	YES	NO
Himsl, V.C.		
Story		
Etchart		
Kolstad		
Lockrem	absent	
Nelson		
Smith		
Stephens		
Fasbender		
Boylan		
Flynn	absent	
Mehrens		
Regan		✓
Roberts		
Thomas		
Thiessen, Chairman		

Secretary Chairman

Motion: SB 385 ✓ 6

1690 ✓

JUDICIARY COMMITTEE

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 27	revise the laws relating to elections and to repeal	3-15	Blaylock	Tuesday Mar 22	concurred in amended	3/22
SB 385	revise law - eligibility for parole and the merger of sentences when a 2nd crime is committed, etc.	3-17	Thomas	Tuesday March 22	concurred in	3/22
HJR 93	recognizing law day	3-19	Kimble	Tuesday March 22	no recommendation	3/22
SJR 46	requesting the committee on priorities to designate the appropriate committee to study agencies, etc.	4-5	Towe	Friday April 8	concurred in	4/8
SJR 48	directing DNR to do more to speed up compilation of existing water rights, etc.	4/14	Graham	4/14	not concurred in	4/14
HJR 106	honoring former governor J. Hugo Aronson	4/14	Marks	4/14	do pass	4/14

JUDICIARY COMMITTEE

March 22, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present with th exception of Representatives Colburn, Conroy, Courtney, Kennerly and Seifert.

SCHEDULED FOR HEARING WERE SENATE BILLS 27 and 385 and HOUSE JOINT RESOLUTION #93.

The hearing opened on Senate Bill 385:

SENATE BILL #385:
SENATOR THOMAS, DISTRICT #20:
This bill will revise the law regarding eligibility for parole and merger of sentences when a second crime is committed while in prison or on parole or furlough. The rights for parole eligibility is from 1/4 to 1/2. The purpose is to try to take the intent, as set forth in the codes, so the parole board can work with the offender who is a threat to society. He went on to explain in more detail how this would be done. Judge Shamptrom intended to be here and was unable to make it. He is the head of the trial judges.

JACK LYNCH, EXECUTIVE SECRETARY FOR BOARD OF PARDONS:
I am heartily in support of this bill. It would give the parole board a great deal of authority. I feel this measure is good legislation

HANK BURGESS, BOARD OF PARDONS:
I think it will do the many things that have been problem areas, that have been mentioned. I have always felt that a higher penalty should be available for the offender who is back several times. I am very strongly in favor of this legislation. I think it will solve the problem of the feeling that the violent offenders are sometimes paroled when they shouldn't be. He went on to talk in this same vein and explain in more detail the intent of the bill.

TOM DOWLING, SHERIFFS AND PEACE OFFICERS:
There are a number of offenders who are multiple offenders. Under the old system the longest we could give them was 50 years. I think this bill will solve a lot of our problems. I support it.

TOM HONZEL, COUNTY ATTORNEYS:
We support this bill for reasons that have already been stated.

SENATOR THOMAS:
The fiscal note had quite a bit of work done on it. There were two fiscal notes. This is the latest one. The fixed cost of operating the prison is the major portion of the total per diem cost. Small variations in population could be absorbed without increases in facilitie or personnel. It is a kind of common-sense approach to a very difficult problem.

The question was asked if there no longer existed the multiple offender act. Senator Thomas stated that yes, it has been repealed.

REPRESENTATIVE DUSSAULT asked for the definition of the non-dangerous offender. There was general discussion about this definition.

MR BURGER:
We went to several sources to find this definition. We wanted the best definition. One source he mentioned was the American Correctional Association Handbook. He said this was an excellent definition.

There were no further questions, so the hearing closed on Senate Bill 385.

SENATE BILL #27:
SENATOR BLAYLOCK, chief sponsor of the bill did not attend the hearing, so Larry Weinberg stated he would explain the bill.

LARRY WEINBERG, LEGISLATIVE COUNSEL:
There are some amendments we wish to have put in the bill. One is on page 11, lines 23 and 24. He discussed the senate amendments and then went on to discuss the voting privilege. He stated that if you are out on parole your right to vote is reinstated.

There was discussion about the rights that are in the constitution, pertaining to the convicted felon. The right to vote is triggered by the release from prison. He mentioned the committee should look at the election laws.

JOAN WOODGERD, SECRETARY OF STATE OFFICE:
I have some proposed amendements, on page 36, line 10, change columns back to categories. With the size of elections getting bigger, it is no longer possible to put only three columns anymore. On page 94, section 75, this is a new R.C.M. section that would go into title 97. It was an attempt to straighten out a problem in the old law. If the Senate Bill 403 passes it will repeal this section. I would suggest you delete all of section 75, on page 94 and 95, if SB 403 passes. 403 would repeal all of the sections.

Discussion followed about repealing the law and amending the law.

After general discussion and some questions, the hearing closed on Senate Bill 27.

HOUSE JOINT RESOLUTION #93:
REPRESENTATIVE DUSSAULT commented that this was merely a method of drawing attention to the observance of law day. May 1st is already established as law day and the general feeling of the committee was that it was not needed.

The committee went into executive session at 8:45 a.m.

John P. Scully, Chairman

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 22, 1977

The executive session of the House Judiciary Committee was called to order by Chairman Scully at 8:45 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except the following: Representatives Colburn, Conroy, Courtney, Kennerly and Seifert.

HOUSE JOINT RESOLUTION #93:
REPRESENTATIVE LORY moved "do not pass". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "do pass". The motion was tied with the bill going out of committee with no recommendation.

SENATE BILL #33:
REPRESENTATIVE LORY reported from the sub-committee that the bill be concurred in, and moved the motion. The motion carried with the vote unanimous.

SENATE BILL #37:
REPRESENTATIVE RAMIREZ reported he did not have the amendments ready for presentation to the committee. He will have them Friday.

SENATE BILL #34:
REPRESENTATIVE LORY moved that the sub-committee report of "be concurred in" be adopted. The motion carried with the vote unanimous.

SENATE BILL #53:
REPRESENTATIVE KEYSER moved to amend. The amendments as proposed were voted upon and the motion carried with vote unanimous. REPRESENTATIVE LORY moved "be concurred in as amended". The motion carried with the vote unanimous. (amendments attached)

SENATE BILL #216:
REPRESENTATIVE DAY reported the water sub-committee had voted to table this bill. The Judiciary Committee accepted the committee report to table and the motion carried with the vote unanimous.

SENATE BILLS #413 and 419:
These bills are still in sub-committee for work and study. The committee will report on Friday.

SENATE BILL #385:
REPRESENTATIVE KEYSER moved be concurred in. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES came in late to committee and moved the committee reconsider its action on Senate Bill #385. The motion failed with only one yes vote. Representative Holmes asked that she be recorded as a no vote on this bill.

SENATE BILL #27:
REPRESENTATIVE RAMIREZ moved to amend on page 36. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved to amend on pages

SENATE BILL NO. 385

INTRODUCED BY THOMAS, MEHRENS, HEALY, PETERSON, ABER, McCALLUM, LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section that reads as follows:

Judicial designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under 95-3214 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; ~~and~~ OR

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

Section 2. Section 95-2213, R.C.M. 1947, is amended to read as follows:

"95-2213. Merger of sentences. (a) Unless the judge otherwise orders, (1) when a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term, and (2) when a person under suspended sentence or on probation ~~or parole~~ for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence, OR probation, ~~or parole~~ shall be merged in any new sentence of commitment or probation.

(b) The court merging the sentences shall forthwith furnish each of the other courts and penal institutions in which the defendant is confined under sentence with

authenticated copies of its sentence, which shall cite the sentences being merged.

(c) If an unexpired sentence is merged pursuant to subdivision (a), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(d) Separate sentences of two (2) or more crimes shall run concurrently unless the court otherwise orders.

(e) Except as provided in this subsection, when a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under 95-3214 in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Section 3. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"95-3214. Parole authority and procedure. (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released

without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he has served at least ~~one-quarter--(1/4)~~ one-half of his full term, less the good time ~~allowances off, as~~ allowance provided for in ~~section~~ 80-1905; except that ~~no--convict--designated--a--persistent-felony-offender under-section-95-2206,5-may-be-paroled-until-he--has--served at--least--one-third--(1/3)-of-his-full-term,-less-good-time allowances-off,-as-provided-in--section--80-1905~~ a convict designated as a nondangerous offender under [section 1] may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 80-1905. ~~A first--offender-serving-a-time-sentence-may-be-paroled-after he-has--served,--upon--his--term--of--sentence,--twelve--and one-half--(12--1/2)-years.--A-persistent-felony~~ Any offender ~~as-defined-in-section-95-2206,5~~ serving a time sentence may be paroled after he has served, upon his term of sentence, seventeen and one-half (17 1/2) years.

(b) No convict serving a life sentence shall be paroled until he has served thirty (30) years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous

social history and criminal record, his conduct, employment, and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary, with respect to the eligibility of prisoners for parole, and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued it shall recite the conditions thereof."

Section 4. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"95-3215. Conditional release. A prisoner on parole who has served ~~one-fourth--(1/4)~~ one-half of his term or terms, less good time allowances, or a ~~persistent--felony offender--who--has--served--one-third--(1/3)--of-his-term-or terms,-less-good-time-allowances~~ nondangerous offender on

parole who has served one-quarter of his term or terms, less good time allowances, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905."

SECTION 5. APPLICATION OF ACT. THIS ACT APPLIES TO ANY OFFENDER SENTENCED AFTER JULY 1, 1977. (SECTION 2 OF THIS ACT) APPLIES TO ANY PRISONER WHO, AFTER JULY 1, 1977, COMMITS AN OFFENSE WHILE HE IS IMPRISONED IN THE STATE PRISON OR WHILE HE IS RELEASED ON PAROLE OR UNDER THE PRISONER FURLOUGH PROGRAM.

Section 6. Repealer. Section 95-2206.5, R.C.M. 1947, is repealed.

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